

File: PROCUREMENTLEGISLATIVE ANALYSIS~~SK~~
RT
fikBill No. S. 421 Report No. _____ Companion No. _____Title: noneSubject: cost overrunsAmends. freestanding

Contacts: _____

Conclusion: ☒ No Agency objection
☒ Agency objection and/or needs amendment

Analysis: This bill would establish a system whereby the head of each executive agency reports to the Comptroller General on all procurements over \$50M. The report would include the purpose of the procurement and initial cost data for it; there would be periodic rereporting.

Whenever the Comptroller General determined that actual cost was exceeding initial cost by 25%, all work on the procurement would have to stop unless the Congress passed a law authorizing work to commence again in view of the higher actual cost level.

The Agency would have two objections to this bill: 1) requirement that sensitive information be divulged; 2) burdensome intervention in the procurement process.

It does not appear, however, that this bill will see any action. If it does, then we will have to determine what steps to take to insure that the objectionable provisions are removed.

STAT

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25 FEB 1983

STAT

II

98TH CONGRESS
1ST SESSION**S. 421**

To require the Comptroller General of the United States to ascertain increases in the cost of major acquisition programs of the civilian agencies of the executive branch; to limit the obligation and expenditure of Federal funds to carry out any major civil acquisition program after there has been a major increase in the cost of such civil acquisition program until enactment of a law providing new authority to carry out such civil acquisition program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

D.W. FEBRUARY 3 (legislative day, JANUARY 25), 1983
Mr. PROXMIRE (for himself, Mr. PRYOR, and Mr. JEPSEN) introduced the following bill, which was read twice and referred to the Committee on Governmental Affairs

A BILL

To require the Comptroller General of the United States to ascertain increases in the cost of major acquisition programs of the civilian agencies of the executive branch; to limit the obligation and expenditure of Federal funds to carry out any major civil acquisition program after there has been a major increase in the cost of such civil acquisition program until enactment of a law providing new authority to carry out such civil acquisition program, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 *That for the purposes of this Act—*

1 (1) the term "[REDACTED]" shall have the same mean-
2 ing as provided in section [REDACTED]
3 [REDACTED] States Code;

4 (2) the term "civil acquisition program" means
5 [REDACTED] procurement program
6 (other than a construction, acquisition, or procurement
7 program of the Department of Defense), [REDACTED]
8 [REDACTED] related to
9 [REDACTED] program;

10 (3) the term "Comptroller General" means the
11 Comptroller General of the United States;

12 (4) the term "Federal funds" includes funds pro-
13 vided by the Federal Government by grant, but does
14 not include funds allocated to any State or political
15 subdivision thereof under chapter 67 of title 31, United
16 States Code, or any similar law;

17 (5) the term "initial cost estimate", when used
18 with respect to a civil acquisition program, means the
19 estimated total cost of such civil acquisition program
20 on the basis of which the Congress enacts a law
21 authorizing the appropriation of funds, or, if enacted
22 first, a law appropriating funds, for the first time for
23 such civil acquisition program; and

24 (6) the term "[REDACTED]"
25 means any [REDACTED]

1 [REDACTED] and (B) is
 2 estimated to require an eventual total expenditure (in-
 3 cluding expenditures for research, development, test,
 4 and evaluation related to such program) exceeding [REDACTED]

5 [REDACTED]

6 SEC. 2. (a) The [REDACTED] shall be responsi-
 7 ble for [REDACTED]
 8 [REDACTED] program and [REDACTED] on such in-
 9 creases. Such statistics shall be compiled from data submitted
 10 to the Comptroller General under section 3 and from data
 11 collected by the Comptroller General in the process of carry-
 12 ing out audits and reviews authorized by law.

13 SEC. 3. The [REDACTED] of [REDACTED]
 14 [REDACTED] shall [REDACTED]
 15 General, at such times as the Comptroller General shall re-
 16 quire, [REDACTED] program. Such report
 17 shall include—

18 (1) a [REDACTED] of such civil acquisition program
 19 [REDACTED]
 20 [REDACTED] property acquired under such civil acquisition pro-
 21 gram and the expectations for the performance of such
 22 property;

23 (2) the [REDACTED] estimate for such civil acqui-
 24 sition program;

1 (3) the ~~estimated total cost of~~ such civil acquisi-
2 tion program as of the date on which such report is
3 transmitted to the Comptroller General;

4 (4) the ~~estimated total cost of~~ funds, funds
5 appropriated, and funds obligated for such civil acquisi-
6 tion program prior to the date on which such report is
7 transmitted;

8 (5)(A) the estimated or actual date of completion
9 of such civil acquisition program as of the end of such
10 fiscal year; and

11 (B) the date by which such civil acquisition pro-
12 gram was planned to be completed when the civil ac-
13 quisition program commenced;

14 (6) in the case of any such civil acquisition pro-
15 gram for which the estimated or actual completion date
16 is more than six months after the date by which such
17 civil acquisition program was planned to be completed
18 when the civil acquisition program commenced, the
19 reasons that such civil acquisition program will not be
20 completed or was not completed by the planned com-
21 pletion date;

22 (7) ~~a~~ the quantity or size of the prop-
23 erty to be acquired under such civil acquisition pro-
24 gram from the quantity or size originally planned to be

1 acquired when the civil acquisition program com-
2 menced, and the reasons for each such change;

3 (8) the reasons for any actual or projected in-
4 crease in the total cost of such civil acquisition pro-
5 gram by 25 per centum or more over the initial cost
6 estimate for such civil acquisition program; and

7 (9) actions taken or proposed to be taken to con-
8 trol subsequent increases in the cost of such civil acqui-
9 sition program.

10 SEC. 4. (a)(1) [REDACTED] the [REDACTED] General [REDACTED]
11 [REDACTED] in the case of any major civil acquisition program that
12 the [REDACTED] cost of such civil acquisition
13 program [REDACTED] estimate of such civil acquisi-
14 tion program [REDACTED] or more, the Comptroller
15 General [REDACTED]—

16 (A) [REDACTED] of the determination [REDACTED]
17 [REDACTED] carrying out such civil acquisition program; and

18 (B) a report on such determination to the [REDACTED]
19 [REDACTED]

20 (2) The report transmitted under paragraph (1) shall in-
21 clude—

22 (A) a statement of the reasons for the increase in
23 the actual or estimated total cost of such civil acquisi-
24 tion program;

1 (B) all actions taken or proposed to be taken to
2 control subsequent increases in the cost of such civil
3 acquisition program;

4 (C) each change made in the schedule milestones
5 or in any estimates of the quantity of the property that
6 the agency is acquiring under such civil acquisition
7 program and a description of the extent to which such
8 changes have contributed to the increase in the actual
9 or estimated total cost of such civil acquisition pro-
10 gram; and

11 (D) an index of all testimony and documents for-
12 mally provided to the Congress on the estimated total
13 cost of such civil acquisition program.

14 (b) ~~For the purpose of any major civil acquisition program~~
15 ~~with respect to which the Comptroller General transmits a~~
16 ~~notice under subsection (a)(1), the agency may be obligated~~
17 or expended on such civil acquisition program after the date
18 on which the head of the agency carrying out such civil ac-
19 quisition program receives such notice ~~and the law described~~
20 ~~in subsection (c) is enacted.~~

21 (c) The law referred to in subsection (b) means a law
22 which (1) contains only provisions which provide authority to
23 obligate and expend funds on a major civil acquisition pro-
24 gram to which subsection (b) applies, (2) provides such au-
25 thority for a period of not more than one year beginning on

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1 the date of enactment of such law, and (3) is enacted after
2 the date on which the head of the agency referred to in sub-
3 section (b) receives the notice referred to in such subsection.

4 SEC. 5. The Comptroller General shall develop and im-
5 plement policies and procedures applicable to all agencies for
6 reflecting the effects of general economic inflation on cost
7 data reported to the Comptroller General under section 3.

8 SEC. 6. This Act shall not apply in the case of any
9 major civil acquisition program for which funds have been
10 appropriated prior to the date of enactment of this Act.

○

DSA

February 3, 1983

CONGRESSIONAL RECORD — SENATE

S 989

got hung up on a minor amendment during the closing hours of the hectic lameduck session.

The bill I am introducing today is identical to the legislation that passed the Senate last December 22, which except for the addition of the minor amendment suggested by the administration, is as it was passed by the House earlier in the 97th Congress. The administration amendment, clarifying the Federal protection of judgment fund distributions for minors and incompetents, created a small discrepancy between the Senator and House versions which the House, due to the lateness of the hour, did not have an opportunity to accept before adjournment. I am informed that the House has no objection to this small administration amendment, which has no effect on the substance of the bill. With last Congress version of this legislation having received the administration's support and having passed both the House and Senate, I look forward to the smooth and rapid passage and enactment of today's bill.

The need for this legislation first came to light several years ago when the confederated tribes of the Warm Springs Reservation of Oregon began issuing tribal income per capita payments to their members on tribal checks. Initially, this development was welcomed by the local agency of the Bureau of Indian Affairs, which previously had been hand typing the distributions on green Government checks as the money was drawn out of the confederated tribes' Federal trust account. The Federal employees had been using data provided by the confederated tribes to issue the checks anyway, and the tribes' automated system was much quicker. Further, and perhaps more importantly, the tribal checks allowed the funds to be properly recognized in the surrounding communities as income being generated by the confederated tribes and not mistaken as some Federal handout. So, as a matter of relief to the Federal administration of the burden and expense, and as an example of tribal capability and Indian self-determination, as well as a matter of rightful recognition and pride, the tribes' issuing their own checks was a beneficial practice.

However, before too long, the practice had to be stopped. It was found that existing Federal statutes at 29 Stat. 336 and 30 Stat. 502 specifically require that per capita payments of tribal funds be carried out by Federal officials. These laws were enacted in a time when tribes were unable to administer and account for such disbursements. Today, these laws can prove to be an unnecessary hindrance. The bill I am introducing today will repeal those two sections and permit per capita disbursements to be made either by the Secretary of the Interior or, at the election of the tribe and with the approval of the Secretary, by the tribal government itself. Addition-

ally, the bill will continue the exemption of per capita payments from liability for payment of any previously contracted obligation, now provided by 30 Stat. 502 which will be repealed. Any funds distributed per capita would also be subject to section 7 of the Indian Judgment Funds Act of October 19, 1973, as amended. Judgment fund settlements specifically executed under the 1973 Indian Judgment Fund Act, however, would not be effected except to permit their possible tribal distribution. Where a tribe has elected to make its own per capita income distribution, the Secretary shall not be liable for such distributions.

Mr. President, I ask unanimous consent that the text of this bill be printed in the Record.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 419

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That funds which are held in trust by the Secretary of the Interior (hereinafter referred to as the "Secretary") for an Indian tribe and which are to be distributed per capita to members of that tribe may be so distributed by either the Secretary or, at the request of the governing body of the tribe and subject to the approval of the Secretary, the tribe. Any funds so distributed shall be paid by the Secretary of the tribe directly to the members involved or, if such members are minors or have been legally determined not competent to handle their own affairs, to a parent or guardian of such members or to a trust fund for such minors or legal incompetents as determined by the governing body of the tribe.

Sec. 2. (a) Funds distributed under this Act shall not be liable for the payment of previously contracted obligations except as may be provided by the governing body of the tribe and distributions of such funds shall be subject to the provisions of Section 7 of the Act of October 19, 1973 (87 Stat. 466), as amended.

(b) Nothing in this Act shall affect the requirements of the Act of October 19, 1973 (87 Stat. 466), as amended, or of any plan approved thereunder, with respect to the use or distribution of funds subject to that Act: *Provided*, That per capita payments made pursuant to a plan approved under that Act may be made by an Indian tribe as provided in Section 1 of this Act if all other provisions of the 1973 Act are met, including but not limited to, the protection of the interests of minors and incompetents in such funds.

(c) Nothing in this Act, except the provisions of Subsection (a) of this section, shall apply to the Shoshone Tribe and the Arapahoe Tribe of the Wind River Reservation, Wyoming.

Sec. 3. (a) The Secretary shall, by regulation, establish reasonable standards for the approval of tribal payments pursuant to Section 1 of this act and, where approval is given under such regulations, the United States shall not be liable with respect to any distribution of funds by a tribe under this Act.

(b) Nothing in this Act shall otherwise absolve the United States from any other responsibility to the Indians, including those which derive from the trust relationship and from any treaties, Executive orders, or

agreements between the United States and any Indian tribe.

Sec. 4 (a) The following provision of Section 1 of the Act of June 10, 1896 (29 Stat. 3360), is repealed: "That any sums of money hereafter to be paid per capita to individual Indians shall be paid to said Indians by an officer of the Government designated by the Secretary of the Interior."

(b) Section 19 of the Act of June 28, 1898 (30 Stat. 502), is repealed.◊

By Mr. PROXMIRE (for himself, Mr. PRYOR, and Mr. JEPSEN):

S. 421. A bill to require the Comptroller General of the United States to ascertain increases in the cost of major acquisition programs of the civilian agencies of the executive branch; to limit the obligation and expenditure of Federal funds to carry out any major civil acquisition program after there has been a major increase in the cost of such civil acquisition program until enactment of a law providing new authority to carry out such civil acquisition program, and for other purposes; to the Committee on Governmental Affairs.

CIVILIAN COST OVERRUNS

Mr. PROXMIRE. Mr. President, today Senators PRYOR, JEPSEN, and I are introducing a bill to stop cost overruns on nondefense Government projects. This country's major public works projects have been allowed to run over their estimated cost without restraint, and without justification to Congress.

This bill requires that money to a project be shut off when that project costs 25 percent or more than it was estimated to cost initially. My bill will adjust the initial cost estimate to account for inflation. It will not apply to projects whose costs have risen no higher than the inflation rate. Money will be restored to a project only after Congress holds hearings and passes special legislation to get the project going again.

A look at the April 1982 General Accounting Office report explains the need for this legislation. The report included information on 234 non-Defense Department projects either in development or under construction. The initial cost—the figure that Congress was given before it approved the projects—was \$39.1 billion. The total cost of what it will take to complete those projects is now \$106.1 billion—an increase of 173 percent.

GAO did not know how much of this cost growth resulted from inflation, but this bill requires that inflation be taken into account. GAO did report, however, that 186 of those projects—more than half—were 25 percent over their initial estimated cost. And one-third will need 100 percent more money to be completed.

The Army Corps of Engineers probably has a reason why it will cost 87 percent more to bring flood control to the Yazoo River than originally thought. And the Veterans' Adminis-

tration could probably explain in detail why its medical clinic in Little Rock is costing \$69 million more to build. But no law automatically requires those agencies to justify the overruns or stand back and examine the projects in light of their escalated cost. This bill does.

The GAO has urged better reporting and monitoring of Government projects as a means to quell cost growth. Growth would be controlled by this bill because initial estimates on projects would be more accurate. Estimates are often low or optimistic because the agency knows it has a better chance of getting the project approved. And as it stands now, few projects that are approved are stopped, no matter how high costs rise.

This bill provides an incentive for agencies to submit realistic cost estimates, because the agencies know as soon as they spend 25 percent or more above their estimates, their projects will come to a halt.

Mr. President, I am talking about constant dollars, a genuine cost overrun and not one caused by inflation. The Comptroller General would be responsible for accumulating statistics on the cost of civil projects. When any project runs over the 25-percent limit, the Comptroller General would have the power to notify Congress and the agency responsible. From that point on, the money stops until Congress gives the go ahead.

The word must go out to agencies that projects cannot run wild. This bill will help discipline Federal spending and also provide Congress with a check list of projects whose costs are rising rapidly.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 421

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purposes of this Act—

(1) the term "agency" shall have the same meaning as provided in section 551(a) of title 5, United States Code;

(2) the term "civil acquisition program" means any construction, acquisition, or procurement program (other than a construction, acquisition, or procurement program of the Department of Defense), including any research, development, test, and evaluation related to such program;

(3) the term "Comptroller General" means the Comptroller General of the United States;

(4) the term "Federal funds" includes funds provided by the Federal Government by grant, but does not include funds allocated to any State or political subdivision thereof under chapter 67 of title 31, United States Code, or any similar law;

(5) the term "initial cost estimate", when used with respect to a civil acquisition program, means the estimated total cost of such civil acquisition program on the basis of which the Congress enacts a law authorizing the appropriation of funds, or, if enacted first, a law appropriating funds, for

the first time for such civil acquisition program; and

(6) the term "major civil acquisition program" means any civil acquisition program that (A) is financed entirely with Federal funds, and (B) is estimated to require an eventual total expenditure (including expenditures for research, development, test, and evaluation related to such program) exceeding \$50,000,000.

Sec. 2. (a) The Comptroller General shall be responsible for ascertaining increases in the cost of each major civil acquisition program and compiling statistics on such increases. Such statistics shall be compiled from data submitted to the Comptroller General under section 3 and from data collected by the Comptroller General in the process of carrying out audits and reviews authorized by law.

Sec. 3. The head of an agency carrying out any major civil acquisition program shall transmit to the Comptroller General, at such times as the Comptroller General shall require, a report on such civil acquisition program. Such report shall include—

(1) a description of such civil acquisition program in terms of the mission intended to be performed using the property acquired under such civil acquisition program and the expectations for the performance of such property;

(2) the initial cost estimate for such civil acquisition program;

(3) the estimated total cost of such civil acquisition program as of the date on which such report is transmitted to the Comptroller General;

(4) the total amounts of funds authorized, funds appropriated, and funds obligated for such civil acquisition program prior to the date on which such report is transmitted;

(5) (A) the estimated or actual date of completion of such civil acquisition program as of the end of such fiscal year; and

(B) the date by which such civil acquisition program was planned to be completed when the civil acquisition program commenced;

(6) in the case of any such civil acquisition program for which the estimated or actual completion date is more than six months after the date by which such civil acquisition program was planned to be completed when the civil acquisition program commenced, the reasons that such civil acquisition program will not be completed or was not completed by the planned completion date;

(7) all changes in the quantity or size of the property to be acquired under such civil acquisition program from the quantity or size originally planned to be acquired when the civil acquisition program commenced, and the reasons for each such change;

(8) the reasons for any actual or projected increase in the total cost of such civil acquisition program by 25 percent or more over the initial cost estimate for such civil acquisition program; and

(9) actions taken or proposed to be taken to control subsequent increases in the cost of such civil acquisition program.

Sec. 4. (a) (1) Whenever the Comptroller General determines in the case of any major civil acquisition program that the actual or estimated total cost of such civil acquisition program exceeds the initial cost estimate of such civil acquisition program by 25 percent or more, the Comptroller General shall transmit promptly—

(A) notice of the determination to the head of the agency carrying out such civil acquisition program; and

(B) a report on such determination to the Congress.

(2) The report transmitted under paragraph (1) shall include—

(A) a statement of the reasons for the increase in the actual or estimated total cost of such civil acquisition program;

(B) all actions taken or proposed to be taken to control subsequent increases in the cost of such civil acquisition program;

(C) each change made in the schedule milestones or in any estimates of the quantity of the property that the agency is acquiring under such civil acquisition program and a description of the extent to which such changes have contributed to the increase in the actual or estimated total cost of such civil acquisition program; and

(D) an index of all testimony and documents formally provided to the Congress on the estimated total cost of such civil acquisition program.

(b) In the case of any major civil acquisition program with respect to which the Comptroller General transmits a notice under subsection (a)(1)(A), no funds may be obligated or expended on such civil acquisition program after the date on which the head of the agency carrying out such civil acquisition program receives such notice unless a law described in subsection (c) is enacted.

(c) The law referred to in subsection (b) means a law which (1) contains only provisions which provide authority to obligate and expend funds on a major civil acquisition program to which subsection (b) applies, (2) provides such authority for a period of not more than one year beginning on the date of enactment of such law, and (3) is enacted after the date on which the head of the agency referred to in subsection (b) receives the notice referred to in such subsection.

Sec. 5. The Comptroller General shall develop and implement policies and procedures applicable to all agencies for reflecting the effects of general economic inflation on cost data reported to the Comptroller General under section 3.

Sec. 6. This Act shall not apply in the case of any major civil acquisition program for which funds have been appropriated prior to the date of enactment of this Act.

By Mr. JEPSEN (for himself and Mr. THURMOND):

S. 422. A bill to amend title 18 of the United States Code to provide a criminal penalty for robbery of a controlled substance; to the Committee on the Judiciary.

PHARMACY ROBBERY

● Mr. JEPSEN. Mr. President, as you know, I have been working on legislation to make the robbery of a controlled substance a Federal offense. For the past 3 years, I have been submitting legislation to address this problem and for the past 3 years, the Senate has seen fit to support my efforts.

Unfortunately, as many of my colleagues know, the House has not always been as willing to act on this legislation. The last days of the lame-duck session were an example of this.

Despite overwhelming support in both the House and the Senate, the pharmacy robbery legislation was never allowed to come before the House for a vote. I think I speak for thousands of pharmacists when I say that this was regrettable.

Fortunately, we now have a commitment from the chairman of the House